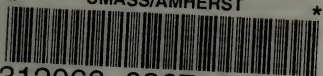


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# Eliminating the Barriers

## *Guide to Bias-Free Behavior in the Massachusetts Courts*



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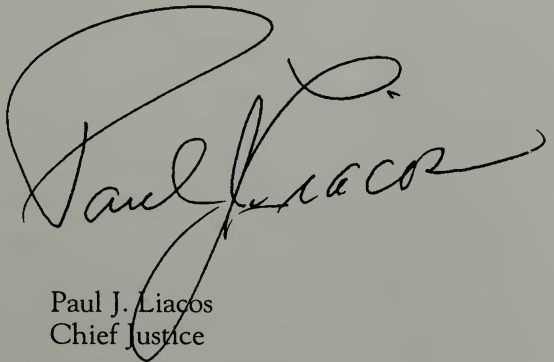
PAUL J. LIACOS  
CHIEF JUSTICE

Article 29 of the Massachusetts Constitution provides, in part:

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit."

These words put on every judge the constitutional mandate that we discharge our mission only by ensuring that justice is truly delivered to every individual who comes to our courts. The existence of bias in any system is reprehensible; its presence in a system established to deliver justice is intolerable.

This informational booklet has been prepared in response to findings made by the Supreme Judicial Court Commission to Study Racial and Ethnic Bias in the Courts, the Supreme Judicial Court Gender Bias Study Committee and the Judicial Working Group on the Americans with Disabilities Act. It is a statement of our dedication to equality and fair treatment for all users of the courts and a guide for eliminating biased behavior in the courts. As we work toward attaining equal access to our courts, we must all be aware of the impact of our behavior towards others.

A large, stylized handwritten signature in black ink, reading "Paul J. Liacos". The signature is fluid and cursive, with a large loop at the top and a long, sweeping underline.

Paul J. Liacos  
Chief Justice



# Introduction

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***Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.***

Massachusetts Constitution,  
Declaration of Rights, Article I

Each participant in the judicial process - judge, court employee, litigant, witness, juror or attorney - regardless of his or her role has a right to be treated with dignity and respect. Discriminatory treatment will be neither condoned nor tolerated in our court system.

The Massachusetts Courts are committed to equal treatment for all users of the court system. On behalf of the Massachusetts Judiciary, the Supreme Judicial Court has convened several committees to study and make recommendations to eliminate racial, ethnic, gender and disability related bias in the Massachusetts judicial system.

The Massachusetts Courts are working to eliminate all forms of bias from the courts and assure the fair and equal application of the rule of law for all persons in the court system. Justice must be dispensed in a non-biased environment and manner.

## History

During the past decade, the Massachusetts Supreme Judicial Court has taken important steps to eliminate barriers to justice.

In December of 1986 the SJC appointed the Gender Bias Study Committee and gave its members a broad and challenging mandate "to determine the extent, nature, and consequences of gender bias in the judiciary and to make remedial recommendations to promote the fair and equal treatment of men and women."

On August 2, 1990 the Massachusetts Supreme Judicial Court established the Commission to Study Racial and Ethnic Bias in the Courts. The Commission was directed to "investigate whether racial and ethnic bias exists in the operations of the Massachusetts judicial system, and report to the court the substance of its findings together with whatever recommendations it deems appropriate to alleviate the problem."

In May of 1992, the Chief Justices of the Supreme Judicial Court, Appeals Court and the Chief Justice for Administration and Management appointed a Judicial Working Group to begin the implementation of the Americans with Disabilities Act to eliminate barriers to justice for those with disabilities.

The final reports of the Committees identified many areas where gender, race and ethnicity influence conduct, procedures, and case outcome, and where barriers to access are posed for persons with disabilities. Similar findings were noted in the Report of the Chief Justice's Commission on the Future of the Courts:

*"For significant parts of the population today the Massachusetts justice system is not working. While the Supreme Judicial Court's Commission to Study Racial and Ethnic Bias in the Courts and the Committee for Gender Equality represent important commitments to identifying, understanding, and eradicating discrimination in our courts, there is more to be done."*

## Definitions & Guidelines

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The Committee to Study Gender Bias defined gender bias as:

**"....when decisions made or actions taken are based on preconceived or stereotypical notions about the nature, role or capacity of men and women. Myths and misconceptions about the economic and social realities of men's and women's lives and about the relative value of their work also underlie gender bias."**

The mandate of the Committee to Study Racial and Ethnic Bias derives from Article I of the Declaration of Rights of the Massachusetts Constitution. In this context, the Commission defined racial or ethnic bias as:

**“....decisions made or actions taken on the bias of stereotyped attitudes regarding individuals of various racial and ethnic groups rather than a fair, impartial appraisal of the merits with respect to each individual or situation.”**

The Americans with Disabilities Act defines disability to be a physical or mental impairment that substantially limits one or more of an individual's major life activities, having a record of such impairment, or being regarded as having such an impairment.

Under amendments to Canon 3 of the Code of Judicial Conduct, a judge

**“ ....shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.”**

The Trial Court Affirmative Action Plan, the Courts' policy and procedure for the elimination of sexual harassment in the workplace, and the ADA grievance procedure are other guidelines for eliminating bias in the courts.



# Suggestions for Bias-free Behavior

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## DO:

- Treat all individuals with fairness, respect and courtesy.
- Recognize gender/racial/ethnic/disability related and other stereotypes and remove these biases from the workplace and courtroom.
- Address all individuals by last name and appropriate titles in a public setting.
- Discuss biased behavior with individuals who may be unaware of its existence or impact, and communicate that such behavior will not be tolerated in the court.
- Provide equal treatment to all individuals, regardless of gender, religion, racial or ethnic background, age, disability, sexual orientation, social class or ability to speak English.
- Recognize that all matters handled by the courts are important, especially to the persons whose cases are being heard.

## DO NOT:

- Make assumptions about a person's status or level of authority based on characteristics such as gender, race, ethnicity.
- Use terms of endearment in public settings.
- Make assumptions about individuals or their role in the court based on stereotypes.
- Subject victims of crime to unjust scrutiny because of the nature of the act(s) perpetrated against them, or characteristics such as gender, religion, race, ethnicity, age, disability, sexual orientation, social class, or native language.
- Subject individuals to comments, gestures, touching or other actions that can offend them or make them feel uncomfortable.



# Rights<sup>‡</sup>

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As a Judge, Court Employee, Court User, and Attorney, you have the Right to:

- Be treated with fairness, respect and courtesy.
- Expect non-biased treatment from judges, litigants, attorneys, court employees, witnesses, jurors and other users of the courts.
- Object to gender, racial, or other biased statements or remarks made by judges, litigants, attorneys, court employees, witnesses, jurors and other users of the courts.

<sup>‡</sup> The word “right” as used in this informational brochure refers to ethical or moral correctness and should not be construed to mean a legal right which has been established by the Constitution, legislative action or a court of law.

# Responsibilities

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## **As a Judge, You Have a Responsibility to:**

- Display leadership in setting a non-biased tone and demeanor for your courtroom and judicial operations.
- Take necessary steps to correct discriminatory attitudes or comments to ensure a bias-free court environment.
- Treat litigants, attorneys, court employees, jurors, witnesses and other users of the courts with fairness, respect and courtesy.
- Avoid racial, ethnic, gender, disability related and other bias in your own decision-making and court interactions.
- Object to gender, racial or other biased statements or remarks made by litigants, attorneys, court employees, witnesses, jurors and other users of the courts.
- Monitor your behavior and attitudes to avoid discrimination due to a person's race, ethnicity, gender, religion, age, disability, sexual orientation, social class, or native language.

## **As a Court Employee, You Have a Responsibility to:**

- Treat judges, court employees, litigants, attorneys, jurors, witnesses and other court users with fairness, respect and courtesy.
- Avoid racial, ethnic, gender, disability related and other bias in your own decision-making and court interactions.
- Object to gender, racial, or other biased statements or remarks made by judges, litigants, attorneys, court employees, witnesses, jurors and other users of the courts.
- Monitor your behavior and attitudes to avoid discrimination due to a person's race, ethnicity, gender, religion, age, disability, sexual orientation, social class, or native language.

## **As a Person Using the Court, You Have a Responsibility to:**

- ➡ Treat judges, litigants, court employees, attorneys and other court users with fairness, respect and courtesy.
- ➡ Object to gender, racial or other biased statements or remarks made by judges, litigants, attorneys, court employees, witnesses, jurors and other users of the courts.
- ➡ Monitor your behavior and attitudes to avoid discrimination due to a person's race, ethnicity, gender, religion, age, disability, sexual orientation, social class, or native language.

## **As an Attorney Representing a Litigant in the Court System, You Have a Responsibility to:**

- ➡ Treat judges, court employees, litigants, witnesses, jurors and other attorneys with fairness, respect and courtesy.
- ➡ Avoid racial, ethnic, gender, disability related and other bias in your own decision-making and court and client interactions.
- ➡ Object to gender, racial or other biased statements or remarks made by judges, litigants, attorneys, court employees, witnesses, jurors and other users of the courts.
- ➡ Monitor your behavior and attitudes to avoid discrimination due to a person's race, ethnicity, gender, religion, age, disability, sexual orientation, social class, or native language.

# Complaints

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## Judges

The Code of Judicial Conduct provides standards for judicial behavior. If a person has a complaint regarding the conduct of a judge, he or she may contact the Commission on Judicial Conduct. The Commission on Judicial Conduct was created to review complaints of judicial misconduct and allegations of mental or physical disability affecting a judge's performance.

Complaints regarding court orders should not be sent to the Commission on Judicial Conduct. The Commission on Judicial Conduct is not an appellate court and cannot change a court's order.

### **Commission on Judicial Conduct**

14 Beacon Street  
Boston, MA 02108

617-725-8050

## Clerks, Clerk-Magistrates, Registers, and Recorder

The Code of Professional Responsibility for Clerks of the Courts provides standards of behavior for those serving as Clerk, Register, Recorder and their assistants. Complaints regarding these officials may be filed with the Committee on Professional Responsibility for Clerks of Courts.

### **Committee on Professional Responsibility for Clerks of Courts**

Supreme Judicial Court  
1300 New Courthouse  
Boston, MA 02108

617-557-1101

## **Court Employees**

If a person has a complaint regarding the conduct of a court employee, he or she may contact the Presiding Justice or Clerk-Magistrate of that court. If the complaint relates to the conduct of a clerk-magistrate, including clerks, registers, recorders and their assistants, a complaint may also be filed with the Committee on Professional Responsibility for Clerks of Courts as stated above.

## **Attorneys**

The Rules of Professional Conduct provide standards for attorney behavior. If a person has a complaint regarding the conduct of an attorney, he or she may contact the Board of Bar Overseers. The Board of Bar Overseers was created to investigate complaints of attorney misconduct.

### **Board of Bar Overseers**

75 Federal Street  
Boston, MA 02110

617-357-1860

## **Americans with Disabilities Act**

Persons may file a complaint alleging discrimination by the Massachusetts Court System on the basis of disability in employment practices and policies or the provision of services, activities, programs and benefits with:

### **ADA Coordinator**

Office of the Commissioner of Probation  
One Ashburton Place  
Boston, MA 02108

617-727-6746 (V/TTY)

## **Court Policies and Procedures**

If a person has a complaint regarding policies and procedures of a court he or she may contact:

### **Administrative Office of the Trial Court**

2 Center Plaza  
Boston, MA 02108

617-742-8575  
617-723-3815 (TTY)

## **Affirmative Action**

Complaints relating to such issues as recruitment, hiring, transfers, promotions, training, compensation, benefits, discipline, or termination may be referred to the Affirmative Action Officer (617-742-8575). A person who chooses to use the Trial Court's resolution process is not precluded from filing a complaint or grievance with other appropriate parties such as the Massachusetts Commission Against Discrimination (617-727-3990), or the Equal Employment Opportunity Commission (Boston Office - 617-565-3200). Court employees may also direct complaints to their unions.

## **Policy and Procedure for the Elimination of Sexual Harassment in the Workplace**

Employees or members of the public who use the courts and wish to file a sexual harassment complaint have several options. A complaint may be filed with the Human Resources Department of the Administrative Office of the Trial Court (617-742-8575), with the Massachusetts Commission Against Discrimination (617-727-3990), or the U. S. Equal Opportunities Commission (Boston Office - 617-565-3200). This list is not exhaustive and is not intended to represent legal advice or referral. Employees who are members of a union may elect to file a grievance under their collective bargaining agreement.

## For Copies of Various Studies, Reports, or Policies



The Final Reports of the Massachusetts Supreme Judicial Court's Gender Bias Study Committee and the Commission to Study Racial and Ethnic Bias in the Courts can be obtained through the Office of Public Information 617-557-1113. Copies of the Trial Court's Affirmative Action Plan and Sexual Harassment Policy can be obtained through the Human Resources Department of the Administrative Office of the Trial Court at 617-742-8575.

### **Supreme Judicial Court**

1300 New Courthouse  
Boston, MA 02108

### **Administrative Office of the Trial Court**

2 Center Plaza  
Boston, MA 02108

April 1996

This pamphlet was first presented at the 1996 "All Court Conference on Racial and Ethnic Issues," sponsored by the Supreme Judicial Court, the Trial Court, and the Flaschner Judicial Institute.



